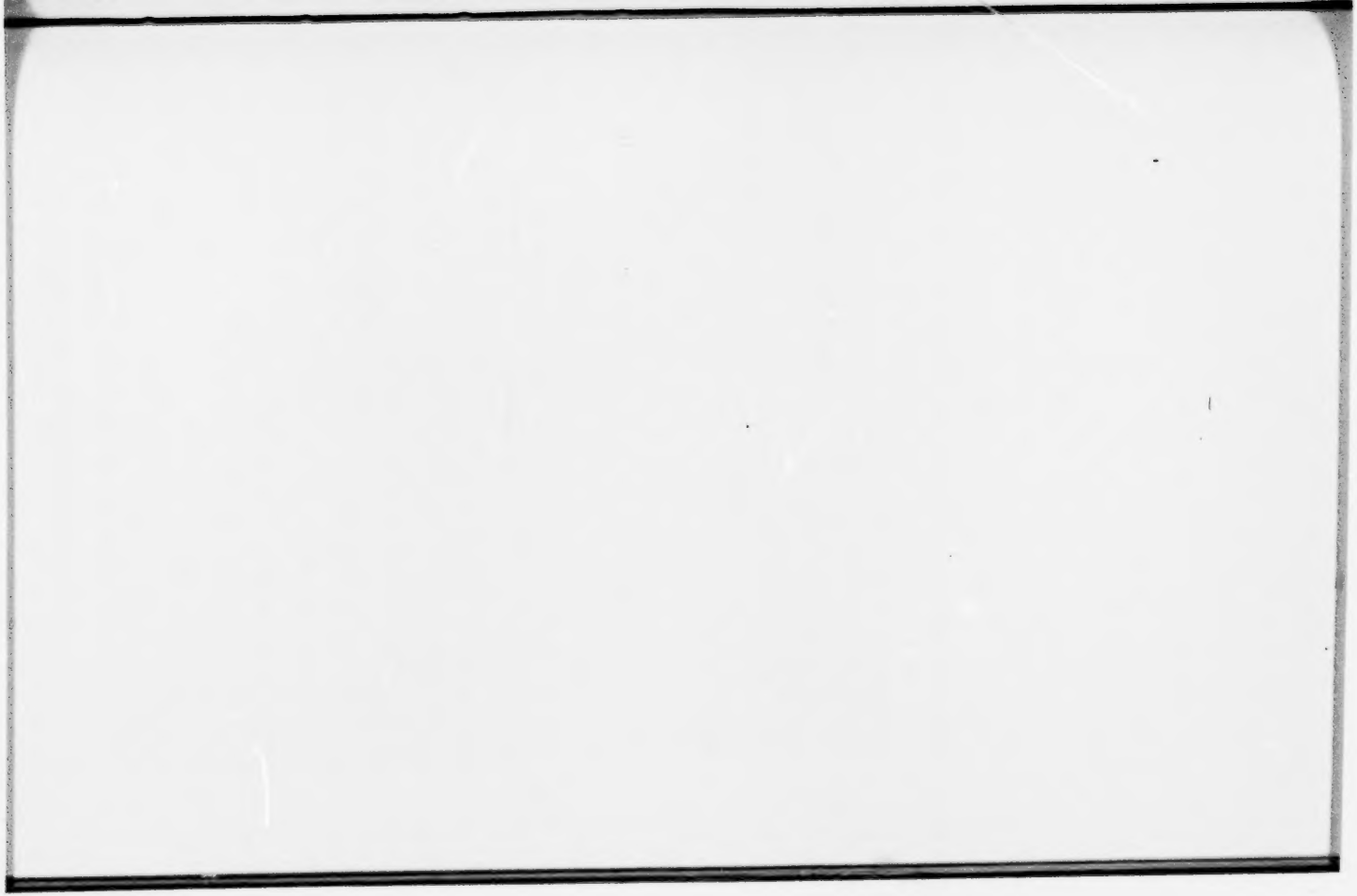

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 808.

JACOB REICHERT,

Petitioner,

vs.

THE FEDERAL LAND BANK OF SAINT PAUL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

BASIS OF JURISDICTION

This Court has jurisdiction under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

In stating the facts and the issues the petitioner overlooks and omits certain facts which materially affect the questions submitted. While respondent does not concede that the issues are as stated by petitioner, and does not adopt those issues, for clarity the respondent supplies certain additional facts and makes the following restatement of each issue contained in the petitioner's petition and brief.

RESTATEMENT OF ISSUES CONTAINED IN PETITIONER'S BRIEF

1. Where a farmer-debtor was adjudged a bankrupt under Section 75(s) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)), on May 31, 1941, is ordered to pay rental for the year 1941 and succeeding years upon two sections of land, by the terms of a rental and stay order entered August 25, 1941, from which no appeal was taken, and pays into Court as part of such rental $1,456.27 on October 11, 1941, and deposits the initial or original appraised value of said land, $4,560.00, in November, 1941, but upon request of the respondent, a secured creditor, a hearing to fix the value of said land, pursuant to the provisions of said Section 75(s)(3), (11 U. S. C., Sec. 203(s)(3)) is held which finally results in the value thereof being fixed at $10,400.00 by an order of the District Court dated September 1, 1942, at which time taxes in the amount of $1,605.83 are due and unpaid on said land, is the bankrupt entitled to credit said $1,456.27 rental deposit upon the amount of $10,400.00 required to redeem said land and obtain an order turning over to him the land free and clear of encumbrances.

2. Where, for the purpose of obtaining an order of the District Court turning said land over to him, the farmer-bankrupt in November, 1941, deposited in Court the amount of the original appraised value of $4,560.00, which value was on September 1, 1942, fixed at $10,400.00 by order of the District Court in proceedings duly had under the provisions of Section 75(s)(3) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)(3)), the farmer-bankrupt retaining possession of said land during all of said time, is his liability for rental thereof under the stay and rental order entered August 25, 1941, terminated as of the date of making said deposit.

3. Where the stay and rental order entered on August

25, 1941 (R. 3 to 5), required among other items the payment of the proceeds of a fixed share of the crops grown on said land in the year 1941, as rental, no appeal therefrom having been taken, and the farmer-bankrupt has deposited a part of said rental, may he make redemption of said land and obtain from the District Court an order turning over to him full possession and title of said land, free and clear of encumbrances, on September 23, 1942, while in default of full compliance with the stay and rental order.

It is respondent's contention, based upon petitioner's Assignments of Errors in the Circuit Court, and the statement of issues by that Court, that the only issue before this Court is that set forth in paragraph numbered 1 of respondent's restatement above.

The Circuit Court of Appeals in stating the issues before it said (R. 35):

> "The debtor contends that the Court erred in two particulars: (1) In holding, in a case in which the debtor redeems the mortgaged land, that the rentals remaining after payment of taxes and upkeep should be distributed to the creditors as their interest may appear—in this case to the appellee as holder of the first lien; and (2) In holding that the crop mortgage, given before adjudication of bankruptcy, was a lien on the debtor's share of the crop remaining after payment of rentals fixed by the Court, 25% of the value of which crop must be paid to the mortgagee in addition to the value of the farm as fixed by the Court."

The second point related to a crop mortgage held by respondent and is not involved in this proceeding.

RESPONDENT'S STATEMENT OF ADDITIONAL FACTS

Petitioner was adjudged a bankrupt under Section 75(s) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)), May 31, 1941 (R. 2).

As stated in petitioner's brief, a stay and rental order was duly entered on August 25, 1941 (R. 3 to 5) specifically requiring rental for the year 1941 and subsequent years. No petition to review said order was ever filed, and no appeal from said order was taken. The farmer-bankrupt partially complied with said order to the extent of depositing with the Court, for distribution, the proceeds of one-fourth of his 1941 crops (R. 15). The statements of points relied upon by the petitioner in his appeal to the United States Circuit Court of Appeals for the Eighth Circuit (R. 26, 27) contain no objection to or attack upon said stay and rental order.

There is no finding by the District Court that this estate is insolvent, nor is there any basis in the record for such a finding. The Circuit Court of Appeals stated (R. 37) that there are no unsecured creditors. The crop proceeds appear to be very large (R. 15). All of the property of the petitioner is still under the supervision and control of the Court.

The petitioner deposited $1,456.27 (R. 15), part of the rental required, which deposit is insufficient to pay the real estate taxes on said land of $1,605.83 (R. 16).

The petitioner's deposit of the fixed value of said land in order to make redemption thereof and obtain an order turning over to him said land free and clear of encumbrances was made in September, 1942 (R. 16), and in making the same he took credit for the full rental deposit of $1,456.27, only depositing $8,943.73 over and above said rental deposit (R. 16, 34).

REASONS WHY WRIT OF CERTIORARI SHOULD BE DENIED

1.

The decision of the Circuit Court of Appeals herein does not conflict with the decision of any other Circuit Court of Appeals on the same matter; and it does not conflict with any applicable decision of the Supreme Court of the United States.

2.

Distribution and application of rentals paid into Court is clearly set forth in said Section 75(s)(2) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)(2)).

3.

The record does not sustain the assertion by the petitioner that the estate herein involved is insolvent.

4.

No review of or appeal from the stay and rental order having been taken by petitioner and no error assigned with respect thereto in petitioner's appeal to the Circuit Court of Appeals, the terms and conditions of said order are not now properly reviewable by this Court.

ARGUMENT

The Supreme Court of the United States has, in Rule 38(5)(b) indicated the character of reasons to be considered for the exercise of the Court's sound judicial discretion in granting a review on a Writ of Certiorari in regard to a decision of a Circuit Court of Appeals.

Petitioner herein does not contend that the decision of which he seeks review involves a question of local law, or that the Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings or sanctioned such a departure. There is no basis in the record for those reasons to arise in this case.

1.

The Decision of the Circuit Court of Appeals Does Not Conflict With the Decision of Any Other Circuit Court of Appeals on the Same Matter; and It Does Not Conflict With Any Applicable Decision of the Supreme Court of the United States.

No other United States Circuit Court of Appeals has decided the matter herein involved to date. Petitioner contends that there are conflicting opinions, resulting in confusion and uncertainty, in the federal courts on the subject of application of rental funds, citing five cases on page 9 of his brief. The first four cases cited, *In re Dewey,* District Court, Missouri, not reported; *In re Ezell,* District Court, Missouri, 1942, 45 F. Supp. 164; *In re Rider,* District Court, Iowa, 1941, 40 F. Supp. 882; and *In re Thompson,* District Court, Missouri, 1942, 48 F. Supp. 557, are all decisions of United States District Courts within the Eighth Circuit. The decision of *In re Rider* is in accord with the instant case. *In re Rider* and *In re Ezell* were not appealed from, but the later

cases of *In re Dewey* and *In re Thompson* were reversed by the United States Circuit Court of Appeals for the Eighth Circuit, on the question of applications of rental, in the reported cases of *Wilson vs. Dewey*, 133 F. (2d) 962, and *Farmers Bank vs. Thompson*, 139 F. (2d) 408 (Petition for Certiorari filed February 7, 1944, number 673 this term). The conflict of decisions apparently relied upon by petitioner, therefore, is between certain United States District Courts and the United States Circuit Court of Appeals in the same Circuit. The above decisions by the Circuit Court of Appeals of the Eighth Circuit settled the law in the Eighth Circuit. In the fifth case cited by petitioner, *Federal Land Bank of Louisville vs. Roney*, C. C. A. 7, 1943, 139 F. (2d) 175, the question of application of rental funds was eliminated by dismissal of the debtor's petition for redemption, and hence not decided. Respondent therefore submits that there exists no conflict of decisions in the lower Courts on the questions herein submitted.

Rather than a conflict of decisions, later decisions of the District Courts within the Eighth Circuit are in accord with principles laid down by the Circuit Court of Appeals for that Circuit. *In re Breuer,* 52 F. Supp. 982; *In re Wenstrom,* 52 F. Supp. 990.

2.

Distribution and Application of Rentals Paid Into Court Is Clearly Set Forth in Section 75(s)(2) of the Bankruptcy Act (11 U. S. C., Sec. 203(s)(2)).

The clear unambiguous language of Section 75(s)(2) of the Bankruptcy Act (11 U. S. C. 203(s)(2)) sets forth the distribution and application of rentals provided for therein shall be:

> "Such rental shall be paid into Court, to be used, first, for the payment of taxes and upkeep of the property,

> and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear."

The claims of the creditors are the respective amounts filed, proved and allowed in the proceedings under Section 75 of the Bankruptcy Act (11 U. S. C., Sec. 75). Claims should not be confused with the amount of the appraisal of the farmer-bankrupt's property, or the value thereof fixed by the Court, as the case may be, which is the amount at which the farmer-bankrupt may redeem his property from the lien of his creditor and obtain the so-called turnover order. Very often, as in the case at bar, the amount of the appraisal or fixed value of the farmer-bankrupt's property upon which the secured creditors have liens, is far less than the amount of their respective claims (R. 14, 16).

It is submitted that Section 75(s)(2) clearly provides that payments which may be ordered by the Court in addition to the rental shall be payments on principal, and clearly provides that rental above taxes and upkeep shall be applied on claims. The language is plain, and the distinction is obvious.

There is no uncertainty in the law or the decisions with respect to the distribution of the rental remaining after payment of taxes and upkeep of the property. The Circuit Court of Appeals for the Eighth Circuit in *Wilson vs. Dewey*, 133 F. (2d) 962, in approving the decision *In re Rider*, 40 F. Supp. 882, stated:

> "But we need to look no further than the Act itself to determine how distribution of these sums in the hands of the receiver should be made. Subsection (s)(2) says that such rental shall be paid into Court to be used for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors and applied on their claims as their interests may appear."

The question in *Wilson vs. Dewey, supra,* was whether, after the farmer-bankrupt had made redemption of his land at the appraised value thereof, the balance of the rentals over and above taxes and upkeep amounting to $2,389.02 should be turned over to the holder of the mortgage to be applied on its claim or refunded to the farmer-bankrupt. The Court stated on page 965:

> "The debtor occupied the premises and, hence, received full value for the rental paid. If this $2,389.02 is refunded to him, however, he will not have paid the rental required for the occupancy and use of the premises during the three years in question."

This Court has held in *Louisville Joint Stock Land Bank vs. Radford,* 295 U. S. 555, and in *Wright vs. Vinton Branch of Mountain Trust Bank,* 300 U. S. 440, that the requirement of the payment of rental was an element necessary to preserve the constitutionality of Section 75 of the Bankruptcy Act. It is apparent that the Circuit Court of Appeals herein by the quotation, *supra,* realized returning rental over and above taxes and upkeep to the bankrupt, which is essentially the same result as allowing the same to be applied as a credit upon the fixed value for redemption, would in effect remove the requirement for the payment of rental and thus remove one of the requirements necessary for the constitutionality of the Act.

Respondent submits there is no uncertainty in the law or in the decisions with respect to the distribution and application of rental remaining after payment of taxes and upkeep of the property.

The facts in the instant case allow no room to question the correctness of the decision of the Circuit Court of Appeals. The District Court found that rentals of $1,456.27 were deposited in Court (R. 15), and it is these rentals that the petitioner seeks to have applied upon the fixed value of

the land for redemption. But that Court also found that the taxes outstanding on the land amounted to $1,005.85 (R. 16). Petitioner in his brief (p. 2) admits that rental must first be applied to taxes, yet the rentals which he seeks to have applied on the fixed value for redemption in this case are insufficient to pay the outstanding taxes. There is no remainder for any distribution.

The holding of the Circuit Court of Appeals is in harmony with principles considered by this Court in *Wright vs. Vinton Branch of Mountain Trust Bank*, 300 U. S. 440, 465-468.

3.

The Record Does Not Sustain the Assertion by the Petitioner That the Estate Herein Involved Is Insolvent.

Petitioner's contention that the Court erred in its application of rental is predicated on his assertion that the bankrupt's estate is insolvent. There is no basis in the record for this assertion. There is no finding by the Courts below that the estate is insolvent. The findings of the District Court that respondent's claims aggregated $14,706.12, while the value of the land securing them was fixed at $10,500.00 (R. 8, 14), are not a finding that the estate is insolvent. The value of other assets of the estate was not at issue herein. All of petitioner's property is still under the supervision and control of the Court. The Circuit Court of Appeals stated (R. 22) that there appear to be no unsecured creditors. The value of one-fourth of the 1941 crops (R. 15) reveals a very large income. It may well be that there are sufficient assets over and above the land to liquidate petitioner's debts.

4.

No Review of or Appeal from the Stay and Rental Order Having Been Taken by Petitioner and No Error Assigned With Respect Thereto in Petitioner's Appeal to the Circuit Court of Appeals, the Terms and Conditions of Said Order Are Not Now Properly Reviewable by This Court.

Petitioner objects to the terms of the stay and rental order (R. 3 to 5) in several respects, particularly where they require rental payment from the proceeds of the 1941 crop. Any objection to the terms of the stay and rental order should have been raised by petitioner by way of timely petition for review or appeal. No review was sought and no appeal perfected from the stay and rental order. No error in regard to it was assigned in the record before the Circuit Court of Appeals below (R. 26, 27). The Circuit Court of Appeals said (R. 36):

> "No complaint is made of the amount of rental fixed in the order of August 25, 1941. There can be no doubt that that part of the order requiring the payment of rental into Court is correct and in accordance with the provisions of the statute."

The quoted language is supported by the statute and case law. Rental orders, as provided by Section 75(s)(2) (11 U. S. C. 203(s)(2)), are to fix the rental at the "usual customary rental in the community where the property is located * * *." That the first payment of rental may be required to be paid before the end of a year from the date of the order appears decided in *Wright vs. Vinton Branch of the Mountain Trust Bank*, 300 U. S. 440, 467:

> "The clause providing that 'the first payment of such rental shall be made within one year' is obviously capable of either of two constructions. One, that the mortgagor may not be required by the Court to pay before the close of the year. The other, that the Court may not

postpone the payment beyond one year. In view of the requirement of semi-annual rental, the latter seems to us more reasonable. We intimate no opinion as to the validity of this provision under the first construction. As here construed, the clause cannot be deemed arbitrary or unreasonable."

The terms of the stay and rental order are in accordance with the statute, and that order is not now properly subject to review.

Respondent submits that there appears no substantial reason or necessity for granting a Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit, and prays the petition be denied.

Respectfully submitted,

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